

**Probate Conservatorship Task Force
Business Meeting**

**San Francisco, California
May 24, 2006**

Minutes

Task Force Members Present: Hon. Roger W. Boren (*Chair*), Hon. S. William Abel, Hon. Aviva K. Bobb, Ms. Judith Chinello, Ms. Michelle Williams Court, Hon. Don Edward Green, Hon. Donna J. Hitchens, Hon. Frederick Paul Horn, Hon. Steven E. Jahr, Hon. Laurence Donald Kay (Ret.), Ms. Gina L. Klee, Hon. William H. Kronberger, Dr. Margaret Little, Ms. Margaret Lodise, Hon. Sandra Lynn Margulies, Ms. Patricia L. McGinnis, Hon. Barbara J. Miller, Mr. Richard L. Narver, Ms. Jacquie Paige, Ms. Sandy Sanfilippo, Mr. Alan Slater, Ms. Pat Sweeten, Mr. Alfredo Terrazas, and Hon. James Michael Welch

Task Force Members Not Present: Ms. Gloria Ochoa

Task Force Staff: Chris Patton, (*Lead*), Rod Cathcart, Douglas C. Miller, Dan Pone, Evyn Shomer, Rowena Rogelio, Susan Reeves, and Jennifer Turnure

Item 1 Welcome and Introduction of Members

Justice Roger Boren, Chair, called the meeting to order and welcomed task force members. Introductions were made, the agenda for the day was reviewed, and the minutes from the April 26 meeting were approved.

Item 2 Appointment of New Members to Working Groups

Justice Roger Boren appointed new task force members to working groups:

- Best Practices: Ms. Michelle Williams Court and Ms. Patricia McGinnis
- Education and Training: Ms. Jacquie Paige
- Rules & Laws: Mr. Richard Narver

Item 3 Next Meeting - June 23

The Chair announced that two individuals from the Arizona Administrative Office of the Courts will attend the next meeting on June 23. Attending will be Mr. David K. Byers, Administrative Director of the Courts, and Ms. Nancy Swetnam, Director of Fiduciary Certification Licensing. Arizona has recently overhauled their probate process, and they will share some of their experiences and key learnings. Task force members should prepare questions and/or topics for discussion.

Item 4 Public Comments

There were no attendees from the public.

Item 5 Testimony from the Trust and Estates Section of the Alameda County Bar Association

Ms. Priscilla Camp, Attorney at Law, mediator and Elder Law practitioner, appeared before the task force to represent the bar association. Ms. Camp told the task force that conservatorship administration works well in Alameda County primarily because of the following practices:

1. Strong bench-bar relationship. The Trusts and Estates Section is the most active section in the Alameda County Bar Association with a membership of nearly 200. The section officers meet regularly with court staff, including the probate judge, to share issues of concern to both the bench and the bar.
2. Consistent representation of conservatees and proposed conservatees.
 - Indigent conservatees and proposed conservatees are represented by a single attorney from the Public Defender's office. This position is rotated every other year, giving the incumbent experience in this area and an opportunity to form relationships with the bench and bar that contribute to consistency and sense of trust among the parties.
 - If it appears that resources are available, Legal Assistance for Seniors (LAS) is appointed. LAS is essentially a non-profit law firm funded by Title III of the Older Americans Act and additional grantors. Their fees are very reasonable, below normal levels, and they petition the court for fees at the end of their involvement in a conservatorship case. One attorney and one paralegal devote themselves exclusively to representing conservatees and proposed conservatees which provides for consistent representation.
3. Use of the General Plan, and Initial Setting of Compliance Dates.
 - Alameda County still uses the 4-page General Plan (*see document beginning page 7, along with document currently used by Orange County beginning page 11*) which was initially required by statute, but was repealed in 1993. Many Court Investigators did not have the resources to review the plans once they were submitted, pointing to the critical need for sufficient funding in these offices. [A task force member noted that at times the General Plans were being filled out incorrectly with such vague and general information that they could apply to any case.] Ms. Camp encourages the task force to check into the heavy workload of Court Investigators.
 - Preparing the General Plan requires counsel to review in detail with the conservator how the specific situation will be managed, e.g., conservatee's current level of care, how often will the conservator visit, monthly income and expenses.

- Filing and hearing dates for the Inventory and Appraisal and General Plan, as well as the First Accounting, are set when the conservatorship is granted.
- Adequate funding for court investigators and probate examiners is essential for the effective management of conservatorships.

The Alameda Bar Association offers the following suggestions to improve management of conservatorships:

1. Courts should treat all ex parte matters, including requests for temporary conservatorships, as the exception rather than the rule, and should address them promptly. Temporary conservatorships are often requested because of a true physical, medical, or fiscal emergency, and delays may cause serious and irreparable damage. Processing delays are sometimes caused by court staff workload issues.
2. Every conservator, whether temporary or general, must file an Inventory and Appraisal document within 90 days of appointment. Courts must monitor this requirement to make sure assets are protected.
3. Clarify roles of attorney and guardian ad litem. Counsel may be appointed to represent a seriously incapacitated individual who can neither establish and maintain an attorney-client relationship, nor give instructions to an advocate. Representation is not possible in such circumstances, and the appointment should be as guardian ad litem.

Item 6 Education and Training

Ms. Karen Thorson, Director, AOC Education Division/Center for Judicial Education and Research (CJER) and Mr. Bob Lowney, Senior Manager, Curriculum and Course Development, AOC Education Division/CJER, reported that the annual Probate Institute will be held this year in the fall (October-November time period). The timing allows for coverage of anticipated legislation regarding probate conservatorships. The PCTF noted that any proposed conservatorship education and training must be consistent with new rules and laws that are passed during this time period.

CJER's Probate and Mental Health Education Committee, chaired by Judge Richard Cline, Superior Court of San Diego, is responsible for planning the Probate Institute. The PCTF Education Working Group, chaired by Judge Fred Horn, Superior Court of Orange County, appointed Judge S. William Abel, Superior Court of Colusa County, to act as liaison to the Probate and Mental Health Education Committee. In addition, PCTF member Gina Klee also serves on the Education Committee.

CJER is planning for an Institute with a capacity to serve approximately 150 participants. The exact location and dates of the Institute are still pending. The audience will include judges, probate examiners, probate attorneys and court investigators; the later being a new audience not previously served. The Education Committee will liaison with the PCTF on the development of an appropriate program for court investigators.

Dr. Margaret Little asked if the task force might consider recommending that targeted training for investigators be developed by the Center for Families, Children and the Courts Division (CFCC) as they do other similar types of targeted training for juvenile and family court personnel. Mr. Lowney responded that CJER and CFCC have successfully collaborated on education, such as the area of family and juvenile law.

Mr. Bob Schindewolf, Managing Attorney, Publications and Resources, reported on the benchguide production process. Their unit is currently working on a probate benchguide that will include coverage of probate conservatorships. The probate benchguide will be broken up into several parts as the content areas are quite large. The conservatorship part is targeted as the first one to be produced. CJER's Publications Unit will be soliciting subject-matter experts to review and edit the manuscript. New legislation and the recommendations of the PCTF regarding education and best practices will be incorporated in the probate benchguide.

While the charge of the PCTF is focused primarily on the education and training of judicial officers and court personnel, the PCTF will also be considering the role of local courts and the judicial branch in developing education for the public, such as family members, the self-represented and private professional conservators. For example, AB 1363 (Jones) has a significant education and training component.

Item 7 Office of Court Research

Dag MacLeod, Manager of the AOC's Office of Court Research, reported on a research project to evaluate of performance standards in conservatorships. The Resource Allocation Study (RAS) model was used to estimate the workload for by court for non-judicial positions. Weights are assigned to filings, and from there calculations are made to determine the total minutes required to process a case. The model uses time study data which is limited in that it captures good estimates of how much time is *currently* spent in case processing but does not capture how much time *should* be spent to meet specific standards of care as mandated by rules of court or statute.

Current work by Office of Court Research staff Karen Viscia, Senior Research Analyst, and Hilary Hehman, Research Analyst, is now taking the next step in the area of conservatorship cases to specify both the performance standards for these cases as well as the resources needed to achieve these standards. The project is currently collecting data to evaluate the feasibility of identifying "bundles" of data that would provide useful proxies of courts meeting due process standards in case processing.

The presentation emphasized the challenges to developing performance standards, principally the dearth of detailed data and the multiplicity of operational models among, and even within a single court. Only 20 courts currently report probate information on the Judicial Branch Statistical Information System (JBSIS). This represents less than 20% of the state as they are small courts. It's also difficult to define terms used, e.g., what is the definition of "pending" cases? Court A may report 51 filings, 500 pending cases. Court B may report 51 filings, with 0

pending cases. The data does not show which is correct. Case file confidentiality is also an issue to getting valid numbers.

Office of Court Research estimates there are approximately 31,000 conservatorship cases (of estates and of persons) in the courts currently. Longevity of a conservatorship filing is estimated at between six and eight years. The task force agreed this was a reasonable length of time. They are currently in the process of looking at operations and data from three pilot courts, including San Francisco and Central Los Angeles.

The task force made suggestions as to information they would be interested in seeing:

- Number of temporary conservatorships?
- How long are the temporary conservatorship cases, from start to finish?
- Are they usually done on an emergency basis?
- Is this process overused?
- What are the current court staffing levels?
- What are the current court resource levels?
- How many investigators, examiners, paralegals, and attorneys?
- What are the duties of each of the above?
- How many cases are pending? New filings? Dispositions?
- How do you deal with unrepresented litigants?

The working groups will compile additional topics for survey information and forward to lead staff. Office of Court Research staff will work with members of the Task Force to focus the research questions for any survey to ensure that data collected is both valid and reliable.

Item 8 Working Group Meetings

Each of the working groups met separately to develop their work plans and begin deliberations in their respective areas.

Item 9 Reports of Working Groups

Reports were made by the leads from each of the three working groups:

- a. Rules and Laws – reviews pending legislation, as well as current statutes, case law, rules of courts, forms and procedures, to make recommendations regarding possible reforms in these areas.

Dan Pone provided a brief status report on the four bills currently pending in the Legislature that would impact probate conservatorship.

Alan Slater reported that the working group is focusing their initial efforts on temporary conservatorships. They are looking at proposing statewide uniform rules in these areas: waivers of notice to conservatees, attendance of proposed conservatees, and declarations. They are considering proposing that court investigators be a part of every temporary conservatorship filing, and extending temporary conservatorships when appropriate.

- b. Education and Training – reviews existing education and training programs for judges and other probate court personnel such as examiners and investigators, and makes recommendations regarding possible changes to enhance training.

Judge William Abel reported the education working group is interesting in investigating the jobs that are associated with conservatorships, what training is available for those positions, and developing minimum standards for hiring. They are also interested in practices for accountings.

They plan send a representative to attend the June 15 meeting of the Probate and Mental Health Industry training as court investigators are a part of this training.

- c. Model Programs and Best Practices – reviews innovative programs in California and around the country, and makes recommendations regarding possible models that should be adopted in California to improve the administration and oversight of conservatorship cases.

Judge William Kronberger reported the best practices working group is looking towards developing the conservatorship model of ten years in the future. They are investigating a web based accounting system for conservatorships from St. Paul, Minnesota. This provides uniform reporting and system of accounts and allows information to be uploaded over the internet to the court. They are also taking a look at some best practices of Alameda and Orange Counties. The working group wants to hear more about the systems in place and see if they could be expanded statewide. Many courts have a Court Appointed Special Advocates (CASA) program for dependent children in juvenile court and they are interested to see if this model could be utilized in conservatorship cases. Connecticut, New Jersey and Canada are also potential targets for study.

It was agreed that working groups should target preliminary reports for August, which would become the basis for an interim report to the Judicial Council towards the end of the year.

Item 10 Other Business

With no further business, the meeting was adjourned at 3:00 p.m.

Approved by the Probate Conservatorship Task Force on June 23, 2006

ATTORNEY OF RECORD: TO BE COMPLETED BY THE CONSERVATOR AND FILED THIRTY DAYS PRIOR TO THE GENERAL PLAN HEARING DATE. THE CONSERVATOR SHOULD RETAIN A COPY. A COPY OF THE PLAN AND INVENTORY AND APPRAISMENT MUST BE SENT TO THE COURT INVESTIGATORS OFFICE.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

Conservatorship of the)	Probate No.
[person/and/estate] of)	
)	CONSERVATORSHIP GENERAL PLAN
)	
)	
_____ Conservatee)	Date:
		Time:
		Department:

_____, the conservator of the person/estate of _____ hereby submits the conservator's General Plan in compliance with local court rules.

1. Conservatee's name, date of birth and Social Security Number:

2. Address and telephone:

3. Conservatee's residence:

_____ own home/apartment	_____ conservator's home/apartment
_____ skilled nursing home	_____ board and care home
_____ hospital (medical/psychiatric)	_____ other (specify) _____

How long has the Conservatee been in the present residence? _____

Do you anticipate making any changes in the Conservatee's residence in the next year?
_____ No _____ Yes (explain) _____

Please note that the Court Investigator's Office must be notified of any change of address.

4. Current level of care:

_____ requires total care _____ requires assistance with care
_____ able to do own care _____ has feeding tube
_____ ambulatory _____ uses wheelchair/walker
_____ urinary/bowel incontinence _____ has a catheter
Other relevant information _____

5. Conservatee's physical and medical condition:

_____ is in good health _____ is developmentally disabled
_____ confusion/disorientation _____ unable to read/write
_____ memory loss _____ deaf or communication problem
_____ takes regular medications (describe _____)
Please list health problems _____

How often does the Conservatee see a doctor? _____
Doctor's name _____

Are any other health providers involved? _____ No _____ Yes
_____ visiting nurse _____ social worker
_____ podiatrist _____ dentist
_____ counselor _____ physical therapy
_____ speech therapy _____ other (specify) _____

6. How often do you expect to visit the Conservatee?

7. Does the Conservatee have other family or friends that will visit?

8. Do you plan to request conservator fees at the end of the first year?

_____ No _____ Yes (anticipated amount of request) \$ _____

9. Conservatee's Estimated Monthly Income (complete even if a conservatorship of the person only)

Social Security/SSI	\$ _____	Dividends	\$ _____
Pension (source) _____	\$ _____	Rental	\$ _____
Veteran's benefits	\$ _____	Interest	\$ _____
Other (specify) _____			\$ _____
Total Estimated Monthly Income			\$ _____

10. Conservatee's Estimated Monthly Expenses (complete even if a conservatorship of the person only)

LIVING EXPENSES

Rent/Mortgage	\$_____	Utilities	\$_____
Nursing/Care Home	\$_____	In-home care	\$_____
Food	\$_____	Clothing	\$_____
Medical/Dental	\$_____	Medications	\$_____
Transportation	\$_____	Entertainment	\$_____
Other (specify) _____			\$_____
Total Estimated Monthly Expenses			\$_____

11. Other Expenses

TAXES	Current		Estimated Amount
Income Tax	___ Yes	___ No	\$_____
Property	___ Yes	___ No	\$_____
Payroll	___ Yes	___ No	\$_____

INSURANCE

	Company	Coverage Amount	Estimated premium
Homeowner	_____	\$_____	\$_____
Renters	_____	\$_____	\$_____
Automobile	_____	\$_____	\$_____
Worker's Comp	_____	\$_____	\$_____
Health	_____	\$_____	\$_____
Life	_____	\$_____	\$_____

Does the Conservatee receive Medi-Cal benefits?

___ No ___ Yes \$_____ share of cost

12. Do you expect to sell any of the Conservatee's real or personal property in the next year? ___ No ___ Yes

If yes, explain reason _____

13. Do you anticipate any unusual activities related to the management of the conservatee's estate during the next year?

___ No ___ Yes (explain) _____

The undersigned conservator will:

- a. Inventory all assets in which the conservatee has any interest;
- b. Render timely, accurate and complete accountings to the court;
- c. Carry out all mandatory usual and general duties of a conservator;
- d. Maintain periodic contact with the conservatee's physician and other health care providers, if appointed conservator of the person;
- e. Maintain periodic contact with the conservatee's family and friends, if applicable;
- f. Be available to the conservatee on a 24-hour basis for emergencies, or arrange for such coverage by a qualified agent;
- g. Maintain accurate records related to the estate;
- h. Maintain all estate assets in a separate identifiable manner;
- i. Maintain estate cash assets in interest-bearing accounts, except as necessary for everyday administration;
- j. Maintain an adequate surety bond as required by law.
- k. Update case plan as needed.
- l. Refer to the "Conservator's Handbook".

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have retained a copy of this case plan for my records.

Dated: _____

Signature of Conservator

Type or print name

.....

NOTE: Ms. Camp advises one problem the Court Investigator's Office has with this current form is that, in looking at it and the Inventory and Appraisal together, it often isn't clear what the Conservator plans to do. It has been suggested that another question be added at the end: "If monthly expenses exceed monthly income, how do you plan to meet the shortfall a) for the present and b) for the long term?"

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

In the Conservatorship of:

Case No.

PRIVATE PROFESSIONAL
CONSERVATOR'S CARE AND
MANAGEMENT PLAN

Petitioner, _____, a Private Professional Conservator, submits the following Care and Management Plan in the above referenced matter. This plan is based upon Petitioner's opinion and estimate of the services necessary to maintain and manage the person and estate of the Conservatee.

NOTICE IS HEREBY GIVEN to all interested persons that the Court's approval of this plan will insure that the Conservator will be entitled to receive the requested compensation at the end of the next accounting period as long as the services herein approved have been performed. Any interested person who fails to object to this petition will not be entitled to object to the services or rate of compensation, other than objections based on non-performance of the services, at the next accounting. However, at such accounting, Objections may be filed regarding any request for additional compensation not approved at this time.

CURRENT STATUS OF THE CONSERVATEE

1. Petitioner alleges as follows:

2. The Conservatee is _____ years of age.

3. The Conservatee is residing in:

_____ Own home / apartment

_____ Relative's home (relationship)_____

_____ Board and care

_____ Nursing home

_____ Hospital or medical facility

_____ Other (specify)_____

4. The Conservatee has been residing in the present residence since (date)

___ There is no plan to change the Conservatee's residence.

___ There are plans to change the Conservatee's residence.

If so, please describe and explain the anticipated change:

5. (If the Conservatee is residing in his or her own home). The care providers employed to assist the Conservatee are the following:

6. The Conservatee's medical status is as follows:

7. The Conservatee's current socialization and visitation needs are as follows:

- ___ Family and/or friends regularly visit (at least twice weekly.)
- ___ Family and/or friends visit irregularly (at least twice per month.)
- ___ The Conservatee receives few visits from others and the Conservator must plan for and provide this service.

8. The Conservatee has the following special needs or problems which substantially effect the Conservator's duties, anticipated services or compensation:

Management Plan

9. It is anticipated that it will be necessary for the Conservator to visit the Conservatee _____ times per month for a total of _____ hours per month. Petitioner is requesting the Court to approve these services and further to approve compensation for these services at the rate of \$_____ per hour, for a total of \$_____ per month.
10. Petitioner believes it will be necessary to provide the following additional services to properly care for and maintain the personal needs of the Conservatee: (Describe the services planned, hours anticipated per month, hourly rate for each service, and total compensation to be earned per month.)

11. The Conservatee's income is derived from monthly receipts from _____sources which requires the Conservator to receive, deposit, maintain and account for same. Petitioner anticipates that _____ hours per month will be expended to properly manage these receivables. Petitioner therefore requests that the court approve compensation at the hourly rate of \$_____ per hour for a total of \$_____ per month.
12. The Conservatee's monthly living expenses include the handling of approximately _____ accounts payable per month. Petitioner anticipates that _____ hours per month will be expended to properly manage these payables. Petitioner therefore requests that the Court approve compensation at the hourly rate of \$_____ per hour, for a total of \$_____ per month.
13. It is further anticipated that the Conservator's estate will receive on the average periodic receivables and be required to pay _____ periodic payables per year. On that basis the Conservator will be required to expend approximately _____ hours per year in addition to the regular monthly expenditures described above. Petitioner therefore requests the Court to approve compensation based on the above hourly rates in the total amount of \$_____ per year.
14. It is anticipated that it will be necessary to expend approximately _____hours per year maintaining and organizing the Conservator's financial records for the purpose of assisting a professional tax preparer in the preparation of the Conservatee's tax returns. Petitioner therefore requests that the Court approve an annual compensation of \$_____ for such services.

17. Petitioner requests approval of commissions earned to date for services rendered toward the establishment of the Conservatorship, marshaling the assets and other services unique to the process of establishment of this matter, including the preparation of this Petition. Petitioner attaches herewith his/her declaration in support of this request and lodges with the Court the itemized billing for the Court's review.
18. (Optional) Petitioner has incurred attorney's fees and costs in the establishment of this Conservatorship, including the preparation of this Petition, in the amount of \$_____. Petitioner attaches the Declaration of his/her attorney in support of said fees, and Petitioner's attorney lodges herewith an itemized billing for the Court's review.

WHEREFORE, Petitioner requests the following:

1. For approval of the above-described Management Plan.
2. For approval of periodic payments on account in the amount of \$_____ or _____% of the actual monthly compensation, whichever is less.
3. For payment for services rendered in the establishment of this Conservatorship, in the amount_____.
4. For payment of attorney's fees in the amount of \$_____ and for costs in the amount of \$_____.

Conservator